



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 13, 2004

Ms. Melissa L. Barloco  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR2004-7790

Dear Ms. Barloco:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211767.

The Harris County Sheriff's Office (the "sheriff's office") received a request for the autopsy report on Hiji Harrison. The county asserts the information is excepted from public disclosure under section 552.108 of the Government Code.

First, we address the requestor's assertion that the autopsy report is public pursuant to section 11 of article 49.25 of the Code of Criminal Procedure. Section 11 of article 49.25 governs autopsy reports prepared by a medical examiner. Prior to 1999, section 11 read:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall be a part of the record. Copies of all records shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. *Such records shall be public records.* [Emphasis added.]

This office had interpreted this language to mean that autopsy reports prepared by a medical examiner are expressly public. See Open Records Decision No. 529 (1989) (stating that autopsy reports are open in their entirety pursuant to express language of section 11 of

article 49.25 of Code of Criminal Procedure). Consequently, an autopsy report could not be withheld under one of the Act's exceptions to disclosure. *See* Open Records Decision No. 525 (1989) (stating that Public Information Act's exceptions do not, as a general rule, apply to information made public by other statutes).

However, in 1999, the Seventy-sixth Legislature enacted Senate Bill 785, which among other things, amended section 11 to read as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall be a part of the record. Copies of all records shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. *The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:*

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who dies while in the custody of law enforcement. [Emphasis added.]

Based on a plain reading of the amended language, we conclude that the change of language in the statute indicates a legislative intent to change the law. *See Buckner Glass & Mirror Inc. v. T.A. Pritchard Co.*, 697 S.W.2d 712 (Tex. App.—Corpus Christi 1985, no writ) (when Legislature amends law, it is presumed that it intends to change law). All statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law and with reference to it, and statutes are, therefore, to be construed in connection and harmony with the existing law. *State v. Bradley*, 956 S.W.2d 725, 740 (Tex. App.—Fort Worth 1997), *rev'd on other grounds*, 990 S.W.2d 245 (Tex. 2000). In this instance, we must presume that the legislature knew that autopsy reports were expressly made public and not subject to any of the Act's exceptions when it amended the statute to say that autopsy reports are "subject to required public disclosure in accordance with Chapter 552, Government Code." We also conclude that a plain reading of the phrase "subject to required public disclosure in accordance with Chapter 552, Government Code," means that the information must be disclosed in accordance with section 552.021, unless one of the Act's exceptions applies. *See Ex Parte Torres*, 943 S.W. 2d 469 (Tex. Crim. App. 1997) (stating that if language of statute is not ambiguous, court must give effect to plain meaning of its words unless doing so would lead to absurd results). Thus, we will consider whether section 552.108 excepts the autopsy report from public disclosure.

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision No. 474 at 4-5 (1987). The sheriff's office has submitted an affidavit from the Harris County District Attorney's Office objecting to the release of the report because it relates to their pending investigation and prosecution. We agree that release of the information at this time would interfere with the ongoing investigation and prosecution. Therefore, the sheriff's office may withhold the autopsy report from disclosure under section 552.108(a)(1).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

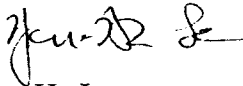
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 211767

Enc: Submitted documents

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(w/o enclosures)